

# Exhibit 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

NETLIST, INC., ( CAUSE NO. 2:22-CV-203-JRG  
(  
Plaintiff, (  
(  
vs. (  
(  
MICRON TECHNOLOGY, INC., (  
et al., ) MARSHALL, TEXAS  
( AUGUST 22, 2023  
Defendants. ) 9:00 A.M.

MOTION HEARING

BEFORE THE HONORABLE ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE

SHAWN McROBERTS, RMR, CRR  
100 E. HOUSTON STREET  
MARSHALL, TEXAS 75670  
(903) 923-8546  
shawn\_mcroberts@txed.uscourts.gov

Shawn M. McRoberts, RMR, CRR  
Federal Official Court Reporter

A P P E A R A N C E S

FOR THE PLAINTIFF: IRELL & MANELLA, LLP -  
LOS ANGELES  
1800 AVENUE OF THE STARS  
SUITE 900  
LOS ANGELES, CA 90067-4276  
(310) 203-7096  
BY: MR. JASON SHEASBY

McKOOL SMITH, P.C. - MARSHALL  
104 E. HOUSTON ST., SUITE 300  
MARSHALL, TEXAS 75670  
(903) 923-9000  
BY: MR. SAMUEL BAXTER

FOR THE DEFENDANTS: WINSTON & STRAWN, LLP -  
REDWOOD CITY  
255 SHORELINE DRIVE, STE. 520  
REDWOOD CITY, CA 94065  
(650) 858-6443  
BY: MR. MICHAEL RUECKHEIM  
MR. RYUK PARK

WARD, SMITH & HILL, PLLC  
1507 BILL OWENS PARKWAY  
LONGVIEW, TEXAS 75604  
(903) 757-6400  
BY: MR. WES HILL

OFFICIAL REPORTER: SHAWN M. McROBERTS, RMR, CRR  
100 E. HOUSTON STREET  
MARSHALL, TEXAS 75670  
(903) 923-8546

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THE COURT: All right.

MR. RUECKHEIM: And I think the next one might be me, Your Honor, but when you're ready.

THE COURT: All right. Go ahead, Mr. Rueckheim.

MR. RUECKHEIM: So with respect to Micron's motion to compel, Docket 135, micron is asking for production of a limited subset of materials from Netlist's litigations with SK hynix that was a few years ago. I believe this limited subset of materials would likely be in the 20- to 30-document range, potentially.

We're looking for really -- it's set out in the joint status report, but it's drafts of settlement agreements and offers, expert reports, witness statements, and depo hearing statements, transcripts in the pre- and post-trial briefing.

The relevance here, Your Honor, is that there is an overlapping accused product and there's also patents that were in the same family that Netlist is asserting here. And we've seen this just recently with respect to deposition of our expert Doctor Stone. Netlist's counsel put up materials that Doctor Stone submitted in the Netlist/SK hynix litigation, and there's issues overlapping there between, what Your Honor may remember from the claim construction hearing, this fork in the road idea, which is also at issue with respect to the SK hynix allegations. And so we think there's very significant technical relevance here.

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There's also relevance with respect to the settlement agreements and offers here, because whether these patents relate to RAND or FRAND obligations and whether Netlist, if so, has breached their RAND or FRAND obligation can be informed by these offers. And so to the extent that Netlist and SK hynix are discussing RAND issues or valuations for portfolio versus specific license, these are all very relevant to these RAND issues.

And so Netlist is countering on a relevance ground. That is simply just not tenable at this stage for discoverability. We have narrowly tailored our request. We're not seeking everything in the SK hynix litigation, nor would I want to review everything from the SK hynix litigation--that's a lot of material. We are seeking a very narrow amount of materials here, and that is our request.

Thank you, Your Honor.

THE COURT: Tell me, Mr. Rueckheim, what do you mean by witness statements?

MR. RUECKHEIM: There was an ITC case and a district court case, and so we're looking at the witness statements in the ITC; the affirmative presentation of testimony -- written testimony to the ITC.

THE COURT: All right. Is it all from an ITC proceeding, or was there a district court proceeding also?

MR. RUECKHEIM: District court as well.

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1 THE COURT: All right. Are any of the experts that  
2 you're seeking the reports of also involved in the current  
3 litigation?

4 MR. RUECKHEIM: I believe so. One in  
5 particular--Doctor Stone, who I just mentioned. I'm not  
6 sure about the rest, Your Honor.

7 THE COURT: All right. How are you proposing that  
8 third-party confidential information that was revealed  
9 pursuant to a protective order in that matter should be  
10 handled if any of that is produced in this litigation?

11 MR. RUECKHEIM: I don't know if there is an issue  
12 there, Your Honor. We've asked for this material really since  
13 the start of the litigation going back to at least January I  
14 believe is mentioned in the briefing, and I don't know if  
15 Netlist has had conversations with SK hynix as to whether they  
16 can produce the information to Micron or if there is a concern  
17 that needs to be addressed.

18 THE COURT: Have you been provided the license that  
19 ultimately issued in that case?

20 MR. RUECKHEIM: Yes, we have.

21 THE COURT: All right. Why would the negotiating  
22 documents be relevant, then?

23 MR. RUECKHEIM: To inform the RAND question, whether  
24 Netlist is offering Micron a reasonable and non-discriminatory  
25 license with respect to the present case. It would definitely

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1 THE COURT: Well, for one thing, I think in that  
2 case we were talking about licenses to the patents-in-suit and  
3 offers that had been made to license the patents-in-suit.

4 Are the patents currently asserted in this case the same  
5 patents as were involved in the SK hynix case?

6 MR. RUECKHEIM: They are not, Your Honor. They are  
7 in the patent family, but they are covered under the portfolio  
8 license that was granted, as is typical for patents and  
9 continuations.

10 THE COURT: Well, I can tell you they feel that, if  
11 anything, I understand this law better than I did when I wrote  
12 that opinion. But in any event, do you have any other  
13 authority on that?

14 MR. RUECKHEIM: That is the authority we cited.  
15 We'd like to see the materials, Your Honor, and I don't think  
16 there is any burden -- there could be any burden argument here  
17 because they can -- they can simply press a button and produce  
18 it to us, but we'd like to see it. And if there is a question  
19 about admissibility or, you know, about 403 down the road, I  
20 think we can deal with it at the MIL stage. That's our  
21 position, Your Honor.

22 THE COURT: All right. I think the concern that has  
23 always deterred the Court from ordering the production of the  
24 negotiations themselves is that doing that would chill  
25 settlement negotiations in current cases if there was a

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1 be informed based on how Netlist and SK hynix discuss the  
2 licensing of individual patents versus a portfolio of patents  
3 or what is actually the reasonable and non-discriminatory rate  
4 here.

5 THE COURT: I think that the Federal Circuit has  
6 made it fairly clear that what FRAND is dealing with is what  
7 the ultimate license contains, not what the parties'  
8 negotiating positions were that got to that agreement. I'm  
9 not familiar with any Federal Circuit authority that would  
10 indicate that a FRAND rate depends on the negotiation history  
11 that led to it. Are you?

12 MR. RUECKHEIM: One second, Your Honor.

13 (Pause in proceedings.)

14 MR. RUECKHEIM: So I should have remembered this,  
15 Your Honor, because I was actually involved in the case, but  
16 it's cited on page 4 of our motion is the *Sol IP* versus--I was  
17 representing Ericsson in the case--but *AT&T mobility*. It's an  
18 Eastern District of Texas case that granted a motion to compel  
19 discovery on these license offers and proposals because they  
20 were relevant to the RAND and FRAND issues there.

21 THE COURT: All right. And how would you say that  
22 this case relates to the *Sol IP* case?

23 MR. RUECKHEIM: There was less patents at issue in  
24 this case. *Sol I* think had somewhere -- about 20 patents  
25 asserted. But how it relates is really just the RAND issues.

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1 concern that those negotiations would become open for  
2 discovery in future cases, and that's what I guess weighs  
3 against the probative value. And I just don't know what the  
4 probative value of those negotiations would be when you have a  
5 consummated license.

6 MR. RUECKHEIM: It may address Your Honor's concern  
7 if -- I just don't know. Looking at these documents, I just  
8 don't know whether they could relate to the RAND issues or  
9 not, and so it may be -- it's just an in camera review process  
10 or some other process that will make that determination as to  
11 whether, you know, they would arguably relate to RAND. And I  
12 assume Netlist and Micron might disagree on what that means,  
13 but if there's a way to mechanic that in order to address that  
14 concern, that would be my only suggestion.

15 THE COURT: All right.

16 MR. RUECKHEIM: Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. SHEASBY: Your Honor, I'll start with the issue  
19 of the settlement negotiations. The patents that were  
20 asserted against SK hynix were not the patents at issue in  
21 this case. Micron has not offered to provide any of its  
22 negotiation records for any of its license agreements. There  
23 is no claim of breach of a FRAND obligation live in this case,  
24 and I -- and we would respectfully submit that it is  
25 pernicious from a public policy standpoint to produce

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1 negotiation materials when there's a final consummated  
2 agreement. If there wasn't a final consummated agreement, I  
3 would understand why a different approach may be necessary,  
4 but in this case there was.

5 As to the SK hynix ITC materials, the patents-at-suit in  
6 this case were not the patents-in-suit in this case. They are  
7 correct that there was one overlapping expert that is actually  
8 their expert. Mr. Stone was adverse to Netlist in the  
9 SK hynix cases, and he is also adverse to Netlist in these  
10 cases.

11 So the only expert that we have in this case -- none of  
12 Netlist's experts from this case were Netlist's experts in the  
13 -- I believe in the SK hynix cases. At least not on -- there  
14 may be one exception to that, but that person, previous  
15 expert, was not dealing -- it's Doctor Brogioli. But Doctor  
16 Brogioli would be dealing with HBM patents, and his previous  
17 work with us did not relate to HBM patents.

18 We do believe that there is some scope of appropriate  
19 production from SK hynix. What we have agreed to produce and  
20 what was acceptable in the *Netlist versus Samsung* case was the  
21 witness statements, trial testimony, and deposition of our  
22 corporate officers, which was CK Hong, Gail Sasaki, and JB  
23 Kim, as well as the trial statements and deposition testimony  
24 of our inventors. That would give them the factual  
25 information as opposed to SK hynix specific information or

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1 third-party supplier specific information, and it would allow  
2 them to make sure that witnesses in this case were not saying  
3 inconsistent things with what was said in the last case.

4 But claim construction briefing and expert analysis of  
5 infringement on completely different products and patents that  
6 have different claims, that is far too afield. And we,  
7 frankly, do not want to go through the process of having to  
8 redact out all the confidential information for what would  
9 seem to be a limited -- a limited probative value given that  
10 there is different patents.

11 So the short answer is they are entitled to something.  
12 We've already acknowledged they are entitled to something. We  
13 offered to give them the same thing that was provided  
14 acceptably in the *Netlist versus Samsung* case which relates to  
15 these same patents, and none of the our experts in this case  
16 will -- were experts in the previous case for us testifying on  
17 the same subject.

18 THE COURT: Well, I don't believe that under the  
19 law statements by experts are admissible in other proceedings  
20 against the party that retained them, so I have never taken  
21 the position that expert reports from other litigation need to  
22 be provided in discovery. In this case, since there is an  
23 overlapping expert, I do believe that any report by -- is it  
24 Doctor Stone?

MR. SHEASBY: It is, Your Honor.

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1 THE COURT: From the hynix -- SK hynix litigation  
2 should be provided to Micron in this litigation. I will deny  
3 the request for the settlement negotiations as long as the  
4 consummated settlement license agreement has been produced. I  
5 agree that any witness statements--and by that I'm referring  
6 to declarations that were offered to the tribunal as opposed  
7 to internal work product of the lawyers--any witness  
8 statements from Netlist certainly. Were there other witness  
9 statements from individuals other than those representing  
10 Netlist that were offered?

11 MR. SHEASBY: There were an immense number of  
12 witness statements in the proceedings. I think there were  
13 three ITC proceedings. That's why the three core witnesses,  
14 the three corporate officers and the inventors was what we had  
15 produced last time. I don't know what other witness  
16 statements there are -- there were.

17 THE COURT: Well, I will require that Netlist  
18 provide to Micron a list of the witness statements that are  
19 being withheld.

MR. SHEASBY: Yes, sir.

21 THE COURT: And if Micron can show a need for those,  
22 then I'm open to considering that request. Deposition  
23 transcripts, the same thing--it will be as to the  
24 representatives of Netlist and a list of the others that are  
25 not provided.

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1 Is the briefing all sealed?

MR. SHEASBY: It is.

3 THE COURT: And is that because of third-party  
4 information or something else?

5 MR. SHEASBY: It's all sealed because of SK hynix  
6 confidential information and third-party confidential  
7 information because the third parties used the -- like Micron,  
8 SK hynix used third parties for the chips they put on their  
9 modules. So the vast majority of the sealing will actually be  
10 third-party confidential information.

11 THE COURT: Well, all right. Then thank you,  
12 Mr. Sheasby.

13 MR. RUECKHEIM, if you want parts of the record from that  
14 proceeding that are sealed, I think that's a request you'll  
15 have to make to the tribunal that sealed them.

MR. RUECKHEIM: Understand, Your Honor.

17 One point of clarification. I think Mr. Sheasby also  
18 -- Your Honor ordered production of reports and I assume  
19 deposition testimony by Doctor Stone.

20 Mr. Sheasby also mentioned an expert Doctor Brogioli--and  
21 I'm sure I'm pronouncing that wrong--that is at issue in the  
22 prior litigation and at issue in this litigation. And so we  
23 would just make sure Your Honor understood that in making his  
24 order. And we'd also ask, unless Your Honor's already  
25 considered it, if there are any experts that opined on the

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1 same overlapping accused product here, the DDR4 LRDIMM or any  
2 of the patents in the same family at the asserted patents. If  
3 Netlist used these experts to characterize its invention in  
4 one way in that proceeding and its current experts are  
5 characterizing different proceedings, we'd love to see that,  
6 too.

7 THE COURT: Why would statements by those experts be  
8 controlling on Netlist?

9 MR. RUECKHEIM: Netlist put up these experts as  
10 their agent, Your Honor, in my opinion. So if they were  
11 offering this testimony as Netlist's position to one tribunal,  
12 and then they tried to hire different experts for this  
13 tribunal to offer a different position I think is very fair  
14 game to me -- for me to ask their expert didn't Netlist say  
15 the opposite in a prior litigation? How does that affect your  
16 opinion now?

17 THE COURT: Well, two things. One, let me note,  
18 you're saying there is a second expert that is common to the  
19 two cases?

20 MR. RUECKHEIM: Correct. I think the name is Doctor  
21 Brogioli. And I have no way of spelling that. I'm sorry.

22 THE COURT: All right. I'll include that doctor in  
23 this. As to other experts, it's never been my impression of  
24 the law that the opinion of an expert is binding on the party  
25 in a different case, but I'll take a look at that and see if

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1 that has changed.

2 MR. RUECKHEIM: Understood, Your Honor. Thank you,  
3 Your Honor.

4 THE COURT: All right. Then I will include that in  
5 the order.

6 Anything else on this motion, Mr. Rueckheim?

7 MR. RUECKHEIM: No, Your Honor.

8 THE COURT: All right. Mr. Sheasby, what about you?

9 MR. SHEASBY: No, Your Honor. That concludes all  
10 scheduled motions for today, and Netlist thanks you.

11 THE COURT: There is another motion, and I think the  
12 briefing on it is perhaps still going on. Is that something  
13 that either side thinks it would be helpful to take up today?

14 MR. SHEASBY: We don't, Your Honor. There is two  
15 other motions pending. There was one of them the briefing has  
16 not been completed. It's a motion to enforce Your Honor's  
17 previously -- previous ruling on financial information and  
18 qualification information. That briefing has not been  
19 completed.

20 There is also just been a brief that was filed on Monday.  
21 Statements were made in that brief that I think may moot the  
22 motion. We just need to meet and confer with them on that.

23 THE COURT: All right. Well, I will set a hearing  
24 on the additional motions in due course, then.

25 MR. SHEASBY: Thank you for your time, Your Honor.

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